

## **MINUTES**

### **MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN MIKE WHEAT**, on April 5, 2005 at 9:03 A.M., in Room 303 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Mike Wheat, Chairman (D)  
Sen. Brent R. Cromley (D)  
Sen. Aubyn Curtiss (R)  
Sen. Jon Ellingson (D)  
Sen. Jesse Laslovich (D)  
Sen. Jeff Mangan (D)  
Sen. Dan McGee (R)  
Sen. Lynda Moss (D)  
Sen. Jerry O'Neil (R)  
Sen. Gerald Pease (D)  
Sen. Gary L. Perry (R)  
Sen. Jim Shockley (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Valencia Lane, Legislative Branch  
Mari Prewett, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 374, HB 643, 4/1/2005  
Executive Action: HB 374, HB 643

**HEARING ON HB 374****Opening Statement by Sponsor:**

**REP. CHRISTOPHER HARRIS (D), HD 66**, opened the hearing on **HB 374**, Increase drunk driving penalty when person under 16 was in vehicle.

**REP. HARRIS** attested that HB 374 recognizes that driving under the influence is a crime and needs to be eliminated. He pointed out that it is even more dangerous if a minor is in the vehicle. He commented that there are 31 States that already have this statute in law.

*{Tape: 1; Side: A; Approx. Time Counter: 0 - 3.6}*

**Proponents' Testimony:**

**Bill Muhs, Public Policy Liaison, Mothers Against Drunk Driving (MADD)-Gallatin County**, stands in support of this very important bill. He provided written testimony to the Committee as well.

**EXHIBIT(jus72a01)**

**Pat Melby, Montana Medical Association**, asserted that he strongly supports this bill.

**Kris Minard, representing herself**, shared a personal story with the members in regard to the protection of children. She urged a do pass.

*{Tape: 1; Side: A; Approx. Time Counter: 3.6 - 10.5}*

**Opponents' Testimony:**

**Mike Barrett, representing himself**, stated that he does not believe this bill is specific enough. He stands in opposition to HB 374.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. MCGEE** referred to the stricken language on Pages 3 and 4. He inquired if **REP. HARRIS** had intended to amend the language dealing with felony DUI. He wondered about the status of that.

**REP. HARRIS** asserted that initially the felony provisions created too much of a cost factor for the Department of Corrections.

**SEN. McGEE** provided a possible amendment to **REP. HARRIS'** bill.

**SEN. SHOCKLEY** inquired if law enforcement individuals were present at the hearing.

**REP. HARRIS** asserted that he did not know; he had spoken with them in regard to this bill.

**SEN. SHOCKLEY** wondered if they had talked to him about the possible lack of room for incarcerating offenders.

**REP. HARRIS** attested that this is a question of an enhanced penalty, not whether they will lock them up or not.

**SEN. SHOCKLEY** asserted that he had spoken with the sheriff's office earlier and they expressed some concern in regard to sufficient capacity. He also inquired if the statistics in regard to DUI's have decreased or increased in the last few years.

**Mr. Muhs** indicated that they do not have the capability to monitor the number of arrests. He stated that they do not have that information system in place.

**SEN. SHOCKLEY** contended that is a deficiency that they should remedy. He wondered if Mr. Muhs could provided an anecdotal response.

**Mr. Muhs** believed that in most of the counties, it is increasing exponentially.

**SEN. SHOCKLEY** wondered if increasing the penalty in the past has had an effect or not.

**Mr. Muhs** asked what penalties **SEN. SHOCKLEY** was referring to.

**SEN. SHOCKLEY** attested that he believed they had increased almost all of the penalties associated with DUI's.

**Mr. Muhs** spoke to the issue of the repeat offender law. He believes this is having a significant impact, by placing people in treatment quicker. He also spoke about the law dealing with the blood alcohol content (BAC) of .08; however, once again, they do not have much concrete data on the results of these.

**SEN. SHOCKLEY** inquired about the drop in relation to these laws.

**Mr. Muhs** stated that he believed it dropped about 35 points.

***{Tape: 1; Side: A; Approx. Time Counter: 10.5 - 22.5}***

**Closing by Sponsor:**

**REP. HARRIS** declared that it is bad enough to be driving drunk; however, it is worse to have a child in the vehicle with you. This bill is a step to deter this activity.

**HEARING ON HB 643**

***{Tape: 1; Side: A; Approx. Time Counter: 22.5 - 23.2}***

**Opening Statement by Sponsor:**

**REP. TIM DOWELL (D), HD 8**, opened the hearing on **HB 643**, Eliminate smoking in enclosed public places.

**REP. DOWELL** spoke about several different organizations that have drafted a compromise to HB 643. He explained that they agree to adhere to this bill as long as it remains as is; they do not want any amendments.

**Proponents' Testimony:**

**Cliff Christian, American Heart Association**, stated that approximately 1400 individuals die each year from smoke. Approximately 200 of those individuals don't smoke; they die from second-hand smoke. He spoke about other toxins that are very dangerous as well, such as asbestos. He explained the compromise and what will happen with the passage of this bill. He also discussed the ramifications of this bill not passing. He provided a document that deals with the compromise.

**EXHIBIT(jus72a02)**

**Mark Staples, Attorney, Montana Tavern Association**, provided some background information on this issue. It is important to find some common ground. He spoke about the section regarding non-severability and the four-year gap for the exempt organizations with passage of this bill.

***{Tape: 1; Side: B; Approx. Time Counter: 0 - 15.1}***

**Dick Paulsen, Executive Director, American Lung Association of the Northern Rockies**, provided two documents which he discussed with the Committee. He spoke about second-hand smoke and ventilation technology. He asked that there not be amendments to this bill.

[EXHIBIT\(jus72a03\)](#)

[EXHIBIT\(jus72a04\)](#)

**Ralph Ferraro, President, Montana Tavern Association**, stated that they have worked hard to put this bill together. He added that some of the members do not agree. However, he implores the committee to pass this important piece of legislation.

**Tim Burton, City Manager, Helena, MT**, stands in support of HB 643. He stated that although this doesn't go as far and fast as they would like to see it go, it is a very reasonable compromise. He urged a do pass.

**Cal McOmber, Owner, Corvallis Tavern, Corvallis, Mt.**, urged the Committee to support HB 643.

**Betty Beverly, Executive Director, Montana Senior Citizens Association**, asserted that they have been working on the smoking ban for four years. There are many seniors concerned with this issue. She provided personal experiences in regard to this bill.

**Rich Miller, Executive Director, Montana Gaming Industry Association**, attested that Mr. Staples provided a very good description of the process they have gone through to keep this moving. They support this bill as it stands.

**Joan Miles, Lewis & Clark County Health Department**, spoke about the enforcement section. She stated that four years is a long period of time. Also, there is no real penalty for offenders of this law. She commented that in time, this bill will be self-enforced.

*{Tape: 2; Side: A; Approx. Time Counter: 0 - 2}*

**Mike Ferradis, President, Cascade County Tavern Association**, stood in support of the compromise and the bill as is.

**Pat Melby, Montana Medical Association**, stated that this is a major public health issue. This is a good compromise measure. They strongly support the bill as is.

**John Hayes, Secretary, Cascade County Tavern Association, Insurance Agent, Great Falls, MT**, stands in support of HB 643.

**Janie McCall, Deaconness Billings Clinic,** appreciates all the hard work that has gone into this bill. They strongly support HB 643.

**Tom Isler, Past President, Montana Tavern Association,** stated that this is a good bill and they support it.

**Mary McCue, Executive Director, Montana Dental Association,** described the organization and stated that dentists are generally the first to diagnose problems associated with smoking. They strongly support this bill.

**Jim Ahrens, President, Montana Hospital Association,** asserted that they strongly support this bill. He stated that it would be truly valuable to everybody if they could reach a compromise.

*{Tape: 2; Side: A; Approx. Time Counter: 2 - 9.4}*

**Opponents' Testimony:**

**REP. JOE MCKENNEY, HD 18, GREAT FALLS,** opposes the bill as it is currently written. He stated that this bill would put his company in bankruptcy. He provided a proposed amendment to the Committee and explained it.

**EXHIBIT(jus72a05)**

**SEN. DAVE LEWIS, SD 42, HELENA,** attested that this is not good for rural bar owners. He directed the members to Page 7, Line 9, and reiterated that it is not a level playing field for small towns and rural areas.

*{Tape: 2; Side: A; Approx. Time Counter: 9.4 - 19.5}*

**Kristin Page Nei, American Cancer Society,** remarked that they cannot support HB 643 as amended. They oppose the preemption for local opportunities. They also oppose the non-severability clause. She provided her testimony to the Committee. She also provided some information on second-hand smoke and non-smokers' rights.

**EXHIBIT(jus72a06)**

**EXHIBIT(jus72a07)**

**EXHIBIT(jus72a08)**

**Rhonda Carpenter-Wiggers, Montana Coin Machine Operators**

**Association**, stated that they reluctantly stand in opposition of this bill as it is written. They do not want to kill the bill. They support **REP. MCKENNEY**'s amendments. She directed them to Page 5, Lines 7-11. She provided scenarios in which gambling and smoking are only available in limited areas.

*{Tape: 2; Side: B; Approx. Time Counter: 0 - 3}*

**Rick DeMarinis, Mechanical Engineer**, explained the air exchange option that could allow some institutions to remain smoking, but allow for clean air as well. He provided a document to the Committee that illustrates this system.

**EXHIBIT(jus72a09)**

**Michael E. Hanson, Co-Owner, Restaurant, Bar & Casino, Fort Benton, MT**, stated that they have placed a ventilation system in their establishment for better comfort for customers and staff. Their business has increased as a result of this.

**Mike Lamphier, Bar-Owner, Lewistown, MT**, repeated some of the comments in regard to rural communities. He stated that they appreciate the work that both sides have done; he hopes they can reach further compromises without putting people out of business.

**Mark Langehough, Co-Owner of a Bar in Kalispell**, stated that he has a problem trying to outlaw something that is legal. He claimed that they need to provide a place for people to go and smoke.

*{Tape: 2; Side: B; Approx. Time Counter: 3 - 13.6}*

**Informational Testimony:**

**Dr. Richard Sargent, Physician, Helena, MT**, provided a disc to the Committee which outlines health and economic issues associated with smoking.

**EXHIBIT(jus72a10)**

*{Tape: 2; Side: B; Approx. Time Counter: 13.6 - 24.9}*

**Questions from Committee Members and Responses:**

**SEN. SHOCKLEY** asked Dr. Sargent about the increase in heart disease if people are exposed to second-hand smoke.

**Dr. Sargent** stated that in the Boston Study, for every 10 micrograms per cubic meter in 2.5, there was a 1% increase in heart disease. He stated that going to a 400 level, there would be approximately a 40% increase in heart disease.

**SEN. SHOCKLEY** inquired, "A 40% increase from what?"

**Dr. Sargent** attested that in Helena, they had a baseline figure of heart disease. They based their findings from that figure regarding the city-wide no smoking ordinance.

**SEN. SHOCKLEY** wondered if the charts he presented earlier were studies done over long periods of time.

**Dr. Sargent** described that the Boston Study was performed over 7 months.

**SEN. SHOCKLEY** reiterated that if he doesn't know what that base rate is, the statistics are not all that informative.

**Dr. Sargent** claimed that one of the studies he is referring to was supported by the Philip Morris Company. He declared that they were more interested in deaths, rather than instances of occurrence. He commented that most people survive heart attacks; there is a difference between deaths and occurrences.

**SEN. SHOCKLEY** hoped that Dr. Sargent could express these figures in cost per hundred thousand.

**Dr. Sargent** stated that he would not be able to provide that information at this time.

*{Tape: 3; Side: A; Approx. Time Counter: 0 - 6.5}*

**SEN. MOSS** wished to clarify that Mr. Staples works for Montana Tavern Association. **Mr. Staples** attested that is correct.

**SEN. MOSS** asked him to explain the number of members in the Association as well as their roles.

**Mr. Staples** explained all the organizations and establishments that they represent. He stated that they represent any establishment that wishes to serve alcohol on the premises, or involve the prospect of gaming.

**SEN. MOSS** inquired if they have members in rural communities.

**Mr. Staples** stated absolutely, and they are concerned about this issue. Trust is essential to this process.



**SEN. McGEE** inquired of Mr. DeMarinis if the exhaust air is treated.

**Mr. DeMarinis** stated that it is not treated; it is pulled straight out of the casino into a heat exchange system.

**SEN. McGEE** asked **REP. DOWELL** if he believes there will be people back in two years with amendments, if this bill passes this session without any.

**REP. DOWELL** stated that if there are amendments proposed, it will be against his wishes. He added, "We're all free agents here."

*{Tape: 3; Side: A; Approx. Time Counter: 6.5 - 12}*

**SEN. CROMLEY** expressed some concerns to the constitutionality of this bill. He wondered if constitutional concerns have been addressed in other states regarding smoking.

**REP. DOWELL** declared that he has not heard of other states experiencing problems with the constitutionality.

**Mr. Staples** spoke about this bill in regard to equal protection grounds. He stated that Florida has a similar bill.

**SEN. CROWLEY** asked Mr. Langehough why he doesn't permit smoking in his home.

**Mr. Langehough** replied that he does not like it; it is his choice.

**SEN. PERRY** asked Dr. Sargent to elaborate on ASRE 62.

**Dr. Sargent** asserted that he should have received part of ASRE 62. He continued to discuss it further with the Committee.

**SEN. PERRY** asked him about liability issues involved with ASRE.

**Dr. Sargent** attested that it is absolutely a liability issue.

**SEN. PERRY** inquired into a statistical analysis that was done during the Helena smoking ban.

**Dr. Sargent** declared that they went out and found an expert statistician to administer this study.

**SEN. PERRY** asked Mr. DeMarinis to expand on what ANSI and ASRE are.

**Mr. DeMarinis** stated that ASRE is a technical organization that gives guidance to heating and air conditioning engineers. It stands for American Society of Refrigeration Engineers. He said that ANSI stands for American National Standards Institute. They develop a lot of standards. He commented that he is not real familiar with ANSI.

*{Tape: 3; Side: A; Approx. Time Counter: 12 - 22.5}*

**SEN. PERRY** commented on high-rise hotels as well as large housing areas. He wondered if all of these establishments use the ASRE system.

**Mr. DeMarinis** declared that primarily he would say that is true.

**SEN. PERRY** asked him what the difference in ventilation systems would be between a high-rise casino in Las Vegas versus a bar in Montana.

**Mr. DeMarinis** stated that many of the establishments are quite similar. He mentioned that the air ventilation systems would be much bigger in an establishment such as a high-rise casino in Las Vegas.

**SEN. PERRY** inquired into the quality of air in an establishment utilizing the system he presented and **REP. McKENNEY's** proposals.

**Mr. DeMarinis** stated that he believes it is possible to get approximately a 90% smoke-removal quality.

**SEN. SHOCKLEY** asked **REP. DOWELL** why this law would exempt bars and restaurants, but not other establishments that allow smoking.

**REP. DOWELL** stated that he does not foresee a problem in **SEN. SHOCKLEY's** law firm, unless clients complain and bring a case before the Health Department.

**CHAIRMAN WHEAT** asked Mr. Staples about the issue that some tavern owners support this bill and other tavern owners do not.

**Mr. Staples** asserted that without a proper computer system, he is unable to provide this information.

**CHAIRMAN WHEAT** sought information about the amendment proposed by **REP. McKENNEY** to bring in some type of air ventilation system.

**Mr. Staples** compared this dynamic to United States versus Russia. He explained the circumstances in which he would oppose the bill. Otherwise, the arguments for this bill are very convincing and he will support the bill.

***{Tape: 3; Side: B; Approx. Time Counter: 0 - 5.6}***

**Closing by Sponsor:**

**REP. DOWELL** discussed the comments made as well as the proposed amendments. He encouraged the Committee to reject the amendments; the bill will fail if they are accepted.

**EXECUTIVE ACTION ON HB 374**

***{Tape: 3; Side: B; Approx. Time Counter: 5.6 - 10.2}***

**Motion:** **SEN. CROMLEY** moved that HB 374 BE CONCURRED IN.

**Discussion:** **SEN. CURTISS** commented on the fiscal note. She stated that she has a problem with the issue of capacity for those arrested.

**SEN. CROMLEY** stated that due to the amendment, there would no longer be that fiscal impact.

**SEN. LASLOVICH** wished to convey that it should be applicable if anybody is in the vehicle, not simply a minor under the age of 16 years old.

**SEN. CROMLEY** stated that he can sympathize with **SEN. LASLOVICH**. He commented that this is not a DUI issue, it is child endangerment. It is really a different crime.

**SEN. MANGAN** asserted that he concurs with **SEN. CROMLEY**. He provided a story which aids in his testimony.

***{Tape: 3; Side: B; Approx. Time Counter: 10.2 - 17.1}***

**SEN. SHOCKLEY** stated that the previous testimony only strengthens his point.

**SEN. MCGEE** had a procedural question. He wondered when this needs to be decided on. He commented that he would like to amend it to a \$10,000 fine for first-time DUI offenders. He asked for a show of hands on the idea of postponing action on this bill.

**Ms. Lane** attested that the amendment would have to surround the issue of minors; that is what this bill is about.

**SEN. McGEE** stated that this bill deals with a punishable offense since the person is caught in the act.

**Vote:** Motion carried 11-1 with **SEN. O'NEIL** voting no. **SEN. ELLINGSON** voted by proxy.

**EXECUTIVE ACTION ON HB 643**

*{Tape: 3; Side: B; Approx. Time Counter: 17.1 - 22}*

**Motion:** **SEN. CROMLEY** moved that HB 643 BE CONCURRED IN.

**Motion:** **SEN. SHOCKLEY** moved that AMENDMENT HB064302.and BE ADOPTED.

*{Tape: 3; Side: B; Approx. Time Counter: 22 - 22.9}*

**Discussion:** **SEN. MANGAN** asserted that he supports the amendment in regard to the economic impact.

**SEN. CROMLEY** stated that he opposes the amendment. The primary issue is that if they support the amendment, they will kill the bill; he supports the bill.

**SEN. CURTISS** declared that she supports the amendment. She believes there should be a significant fiscal note.

**SEN. MOSS** stated that she cannot support the amendment. This bill is too important. She wished to express her appreciation for all of the hard work that has been done by so many individuals.

**CHAIRMAN WHEAT** attested that they should take a look at what happened last cycle. Many people have looked at the realities of what will happen. They need to respect the efforts of both sides to come to this agreement. They cannot kill the bill.

*{Tape: 4; Side: A; Approx. Time Counter: 0 - 4.1}*

**SEN. SHOCKLEY** made closing arguments on these amendments. He explained why he believes this should pass.

**Vote:** Motion failed 5-7 by roll call vote with SEN. CURTISS, SEN. MANGAN, SEN. MCGEE, SEN. O'NEIL, and SEN. SHOCKLEY voting aye. SEN. ELLINGSON and SEN. MANGAN voted by proxy.

SEN. CURTISS stated that she respects the work that has been done. However, she cannot support this bill; there are no teeth in the bill.

SEN. O'NEIL addressed the amendments and stated that he opposes this bill.

SEN. CROMLEY supports this concept. He also commented on the substantial health issue as well as property taxes.

SEN. SHOCKLEY stated that people know if a place is smoky, they are risking their health. He believes it is an issue of property rights.

**Motion:** SEN. MCGEE moved that A CONCEPTUAL AMENDMENT BE ADOPTED.

**Discussion:** SEN. PERRY spoke about Page 7, Line 10. He wished to discuss this language.

CHAIRMAN WHEAT asked Mr. Staples to clarify the language.

Mr. Staples commented on the portions dealing with the areas affected as well as the timeframe.

SEN. PERRY stated it was still somewhat vague.

CHAIRMAN WHEAT reminded the Committee that this a very delicate, compromised bill.

*{Tape: 4; Side: A; Approx. Time Counter: 4.1 - 15.6}*

SEN. PERRY wished to point out that they are doing some strange things in this bill. He expressed some disbelief at what is happening with several different bills.

CHAIRMAN WHEAT reminded SEN. PERRY that they represent everybody. It is important to hear everyone and make compromises.

SEN. MCGEE asked REP. DOWELL to take a look at Page 7, Lines 9-11. He wondered if this would go into effect October 1, 2005.

REP. DOWELL agreed that it would go into effect on that date. He also clarified the process of this language.

**Ms. Lane** expanded on the language in Subsection 4, on Page 7.

Vote: Motion carried 10-2 by voice vote with SEN. ELLINGSON and SEN. MANGAN voting no. SEN. ELLINGSON and SEN. MANGAN voted by proxy.

Vote: Motion carried 9-3 by voice vote with SEN. CURTISS, SEN. O'NEIL, and SEN. SHOCKLEY voting no. SEN. ELLINGSON and SEN. MANGAN voted by proxy.

*{Tape: 4; Side: A; Approx. Time Counter: 15.6 - 20.9}*

**ADJOURNMENT**

Adjournment: 12:07 P.M.

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SEN. MIKE WHEAT, Chairman

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MARI PREWETT, Secretary

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KIM LEIGHTON, Transcriber

MW/mp

Additional Exhibits:

**EXHIBIT ([jus72aad0.PDF](#))**